

R277-202 was approved by the Utah State Board of Education on August 7, 2015. R277-202 is published in the September 1, 2015 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of October 8, 2015.

## **R277. Education, Administration.**

### **R277-202. UPPAC Hearing Procedures and Reports.**

#### **R277-202-1. Authority and Purpose.**

~~[A.](1)~~ This rule is authorized ~~[under]~~by:

(a) Utah Constitution Article X, Section 3<sub>1</sub> which vests general control and supervision over public education in the Board~~[-]~~<sub>1</sub>

(b) ~~[by]~~Section 53A-6-306<sub>1</sub> which directs the Board to adopt rules regarding UPPAC duties and procedures~~[-]~~<sub>1</sub> and

(c) ~~[by]~~Subsection 53A-1-401(3)<sub>1</sub> which allows the Board to adopt rules in accordance with its responsibilities.

~~[B.](2)~~ The purpose of this rule is to establish procedures regarding UPPAC hearings and hearing reports.

~~[C.](3)~~ The standards and procedures of ~~[the Utah]~~Title 63G, Chapter 4, Administrative Procedures Act do not apply to this rule under the exemption of Subsection 63G-4-102(2)(d).

#### **R277-202-2. Scheduling a Hearing.**

~~[A.](1)(a) [Scheduling the hearing.]~~Following receipt of an answer by respondent requesting a hearing:

~~(a)~~i) UPPAC shall select panel members;

~~(b)~~ii) the Executive Secretary shall appoint a hearing officer from among a list of hearing officers identified by the state procurement process and approved by UPPAC; and

~~(c)~~iii) UPPAC shall schedule the date, time, and place for the hearing.

~~(2)~~b) The Executive Secretary shall schedule a hearing for a date that is not less than 25 days nor more than 180 days from the date the Executive Secretary receives the answer~~[is received by the Executive Secretary]~~.

~~(3)~~c) The required scheduling periods may be waived by mutual written consent of the parties or by the Executive Secretary for good cause shown.

~~[B.](2)[Change of hearing date:]~~

~~(1)~~~~(a)~~ Any party may request a change of hearing date by submitting a request in writing ~~[which]~~that shall:

~~(a)~~i) include a statement of the reasons for the request; and

~~(b)~~ii) be submitted to the Executive Secretary at least five days prior to the scheduled date of the hearing.

~~(2)~~b) The Executive Secretary shall determine whether the reason stated in the request is sufficient to warrant a change.

~~(3)~~c) If the Executive Secretary finds that the reason for the request for a change of hearing date is sufficient, the Executive Secretary shall promptly notify all parties of the new time, date, and place for the hearing.

~~(4)~~d) If the Executive Secretary does not find the reason for the request for a change of hearing date to be sufficient, the Executive Secretary shall immediately notify the parties that the request has been denied.

~~(5)~~e) The Executive Secretary and the parties may waive the time period required

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for requesting a change of hearing date for good cause shown.

~~[C.](3)~~ An educator ~~[shall be]~~is entitled to a hearing on any matter in which an action is recommended, as defined in Subsection R277-200-2[A](1).

~~[D.](4)~~ An educator is not entitled to a hearing on a matter in which a disciplinary letter is recommended, as defined in Subsection R277-200-2[N](14).

### **R277-202-3. Appointment and Duties of the Hearing Officer and Hearing Panel.**

~~[A](1)(a) [Hearing officer:]~~The Executive Secretary shall appoint a hearing officer to chair the hearing panel and conduct the hearing.

~~(2)b~~ The Executive Secretary shall select a hearing officer on a random basis from a list of available contracted hearing officers, subject to availability and conflict of interest.

~~(3)c~~ The Executive Secretary shall provide such information about the case as necessary to determine whether the hearing officer has a conflict of interest and shall disqualify any hearing officer that cannot serve under the Utah Rules of Professional Conduct.

~~(4)d) [Duties of a hearing officer:]~~A hearing officer:

~~(a)i~~ may require the parties to submit a brief[s] and a list[s] of witnesses prior to the hearing;

~~(b)ii~~ presides at the hearing and regulates the course of the proceeding[s];

~~(e)iii~~ administers an oath to a witness[es] as follows: "Do you swear or affirm that the testimony you will give is the truth?";

~~(d)iv~~ may take testimony, rule on a question[s] of evidence, and ask a question[s] of a witness[es] to clarify a specific issue[s]; and

~~(e)v~~ prepares and submits a hearing report to the Executive Secretary at the conclusion of the proceedings in consultation with panel members and the timelines of this rule.

~~[B]([1]2)(a) [UPPAC panel members:]~~UPPAC shall select three or more individuals to serve as members of the hearing panel.

~~(2)b~~ As directed by UPPAC, any licensed educator may ~~[be used]~~serve as a panel member, if needed.

~~(3)c~~ The majority of panel members shall be current UPPAC members.

~~(4)d~~ UPPAC shall select panel members on a rotating basis to the extent practicable.

~~(5)e~~ UPPAC shall accommodate each prospective panel member based on the availability of the panel member.

~~(6)f~~ If the respondent is a teacher, at least one panel member shall be a teacher.

~~(7)g~~ If the respondent is a non-teacher licensed educator, at least one panel member shall be a non-teacher licensed educator.

~~(8)h~~ The requirements of ~~[this]~~Subsection [R277-202-3B](2) may be waived only upon the stipulation of both UPPAC and the respondent.

~~[C]([1]3)(a)~~ A UPPAC panel member shall:

~~(a)i~~ assist a hearing officer by providing information concerning professional

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standards and practices of educators in the respondent's particular field of practice and in the situations alleged;

(b)ii) ask a question[s] of a[H] witness[es] to clarify a specific issue[s];

(c)iii) review all evidence and briefs, if any, presented at the hearing;

(d)iv) make a recommendation to UPPAC as to the suggested disposition of a complaint; and

(e)v) assist the hearing officer in preparing the hearing report.

(2)b) A panel member ~~[should]~~may only consider ~~[only such]~~the evidence ~~[as has been]~~ approved for admission by the hearing officer.

(3)c) The Executive Secretary may make an emergency substitution of a panel member for cause with the consent of the parties.

(4)d) The agreement to substitute a panel member shall be in writing.

(5)e) Parties may agree to a two-member UPPAC panel in an emergency situation.

(6)f) If the parties do not agree to a substitution or to having a two-member panel, the ~~[hearing]~~Executive Secretary shall ~~[be]~~reschedule[d] the hearing.

~~[D-](4)[Disqualification of a hearing officer shall be governed by the following requirements:]~~

~~—(1)(a)~~ (1)(a) A party may request that the Executive Secretary disqualify a hearing officer~~[be disqualified]~~ by submitting a written request for disqualification to the Executive Secretary.

~~(2)b)~~ (2)b) A party shall submit a request to disqualify a hearing officer~~[shall be submitted]~~ to the Executive Secretary at least 15 days before a scheduled hearing.

~~(3)c)~~ (3)c) The Executive Secretary shall review a request described in ~~[this]~~Subsection [R277-202-3D](4) and supporting evidence to determine whether the reasons for the request are substantial and sufficient.

~~(4)d)~~ (4)d) If the Executive Secretary determines that the hearing officer should be disqualified, the Executive Secretary shall appoint a new hearing officer and, if necessary, reschedule the hearing.

~~(5)e)~~ (5)e) A hearing officer may recuse himself or herself from a hearing if, in the hearing officer's opinion, the hearing officer's participation would violate any of the Utah Rules of Professional Conduct consistent with the Supreme Court Rules of Professional Practice.

~~(6)f)~~ (6)f) If the Executive Secretary denies a request to disqualify a hearing officer, the Executive Secretary shall notify the party within ten days prior to the date of the hearing.

~~(7)g)~~ (7)g) The requesting party may submit a written appeal of the Executive Secretary's denial to the Superintendent no later than five days prior to the hearing date.

~~(8)h)~~ (8)h) If the Superintendent finds that the appeal is justified, the Superintendent shall direct the Executive Secretary to appoint a new hearing officer and, if necessary, reschedule the hearing.

~~(9)i)~~ (9)i) The decision of the Superintendent described in Subsection [R277-202-3D(8)](4)(h) is final.

~~(10)j)~~ (10)j) If a party fails to file an appeal within the time requirements of Subsection [R277-202-3D(7)](4)(g), the appeal shall be deemed denied.

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~~(14)k~~ If the Executive Secretary fails to meet the time requirements described in Subsection ~~[R277-202-3D](4)~~, the request or appeal ~~[shall be]~~is approved.

~~[E.](5)[UPPAC panel members shall be governed by the following requirements:—(1)](a)~~ A UPPAC member shall ~~[disqualify]~~recuse himself or herself as a panel member due to any known financial or personal interest, prior relationship, personal and independent knowledge of the persons or issues in the case, or other association that the panel member believes would compromise the panel member's ability to make an impartial decision.

~~(2)b~~ A party may request that a UPPAC panel member be disqualified by submitting a written request to the following:

~~(a)i~~ the hearing officer; or

~~(b)ii~~ to the Executive Secretary if there is no hearing officer.

~~(3)c~~ A party shall submit a request described in Subsection ~~[R277-202-3E(2)](5)(b)~~ no less than 15 days before a scheduled hearing.

~~(4)d~~ The hearing officer, or the Executive Secretary, if there is no hearing officer, shall:

~~(a)i~~ review a request described in Subsection ~~[R277-202-3E(2)](5)(b)~~ and supporting evidence to determine whether the reasons for the request are substantial and compelling enough to disqualify the panel member; and

~~(b)ii~~ if the reasons for the request described in Subsection ~~[R277-202-3E(2)](5)(b)~~ are substantial and compelling, disqualify the panel member.

~~(5)e~~ If the panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members:

~~(a)i~~ UPPAC shall appoint a replacement; and

~~(b)ii~~ the Executive Secretary shall, if necessary, reschedule the hearing.

~~(6)f~~ If a request described in Subsection ~~[R277-202-3E(2)](5)(b)~~ is denied, the hearing officer or the Executive Secretary if there is no hearing officer, shall notify the party requesting the panel member's disqualification no less than ten days prior to the date of the hearing.

~~(7)g~~ The requesting party may file a written appeal of a denial described in Subsection ~~[R277-202-3E(6)](5)(f)~~ with the Superintendent no later than five days prior to the hearing date.

~~(8)h~~ If the Superintendent finds that an appeal described in Subsection ~~[R277-202-3E(7)](5)(g)~~ is justified, the Superintendent shall direct the hearing officer or the Executive Secretary if there is no hearing officer, to replace the panel member.

~~(9)i~~ If a panel member's disqualification leaves the hearing panel with fewer than three UPPAC panel members, UPPAC shall agree upon a replacement and the Executive Secretary shall, if necessary, reschedule the hearing.

~~(10)j~~ The decision of the Superintendent described in Subsection ~~[R277-202-3E(8)](5)(h)~~ is final.

~~(11)k~~ If a party fails to file an appeal within the time requirements of Subsection ~~[R277-202-3E(7)](5)(g)~~, the appeal shall be deemed denied.

~~(12)l~~ If the hearing officer, or the Executive Secretary if there is no hearing officer,

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fails to meet the time requirements described in this Subsection [R277-202-3E](5), the request or appeal ~~[shall be]~~is approved.

[F-](6) The Executive Secretary may, at the time the Executive Secretary selects a hearing officer or panel member, select an alternative hearing officer or panel member following the process for selecting those individuals.

[G-](7) The Executive Secretary may substitute a panel member with an alternative panel member if the Executive Secretary notifies the parties of the substitution.

#### **R277-202-4. Preliminary Instructions to Parties to a Hearing.**

[A-](1) No later than 25 days before the date of a hearing, the Executive Secretary shall provide the parties with the following information:

- (1)a) date, time, and location of the hearing;
- (2)b) names and LEA affiliations of each panel member, and the name of the hearing officer; and
- (3)c) instructions for accessing these rules.

[B-](2) No later than 20 days before the date of the hearing, the respondent and the complainant shall provide the following to the other party and to the hearing officer:

- (1)a) a brief, if requested by the hearing officer containing:
  - (a)i) any procedural and evidentiary motions along with the party's position regarding the allegations; and
  - (b)ii) relevant laws, rules, and precedent;
- (2)b) the name of the person who will represent the party at the hearing;
- (3)c) a list of witnesses expected to be called, including a summary of the testimony [which]that each witness is expected to present;
- (4)d) a summary of documentary evidence that the party intends to submit; and
- (5)e) following receipt of the other party's witness list, a list of anticipated rebuttal witnesses and evidence no later than ~~[10]~~ten days prior to the hearing.

[C-](1)3(a) Except as provided in Subsection [R277-202-4C(1)](3)(b), a party may not present a witness or evidence at the hearing if the witness or evidence has not been disclosed to the other party as required in Subsection [R277-202-4B](2).

(2)b) A party may present a witness or evidence at the hearing even if the witness or hearing has not been disclosed to the other party if:

- (a)i) the parties stipulate to the presentation of the witness or evidence at the hearing; or
- (b)ii) the hearing officer makes a determination of good cause to allow [it-in]the witness or evidence.

[D-](4) If a party fails to comply in good faith with a directive of the hearing officer, including time requirements, the hearing officer may prohibit introduction of the testimony or evidence or take other steps reasonably appropriate under the circumstances.

[E-](5) A party shall provide materials to the hearing officer, panel members, and UPPAC as directed by the hearing officer.

#### **R277-202-5. Hearing Parties' Representation.**

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~~[A-](1) [Complainant: The]~~ A USOE prosecutor shall represent the complainant ~~[shall be represented by a USOE prosecutor]~~.

~~[B-](2) [Respondent:—]~~ A respondent may represent himself or herself or be represented, at ~~[his]~~ the respondent's own cost, by another person.

~~[C-](3)~~ The informant has no right to:

~~(1)~~ a individual representation at the hearing; or

~~(2)~~ b to be present or heard at the hearing unless called as a witness.

~~[D-](4)~~ A respondent shall notify the Executive Secretary in a timely manner and in writing if the respondent chooses to be represented by anyone other than the respondent.

#### **R277-202-6. Discovery Prior to a Hearing.**

~~[A-](1)~~ Discovery is permitted to the extent necessary to obtain relevant information necessary to support claims or defenses, as determined by the hearing officer.

~~[B-](2)~~ Unduly burdensome legalistic discovery may not be used to delay a hearing.

~~[C-](3)~~ A hearing officer may limit discovery:

~~(1)~~ a at the discretion of the hearing officer; or

~~(2)~~ b upon a motion by either party.

~~[D-](4)~~ A hearing officer rules on all discovery requests and motions.

~~[E-](5)~~ The Executive Secretary shall issue a subpoena or other order to secure the attendance of a witness pursuant to Subsection 53A-6-306(3)(c)(i) if:

~~(1)~~ a requested by either party; and

~~(2)~~ b notice of intent to call the witness has been timely provided as required by Section R277-202-4.

~~[F-](6)~~ The Executive Secretary shall issue a subpoena to produce evidence if timely requested by either party.

~~[G-](17)(a)~~ A party may not present an expert witness report or expert witness testimony at a hearing unless the requirements of Section R277-202-10 have been met.

~~(2)~~ b A respondent may not subpoena the UPPAC prosecutor or investigator as an expert witness.

#### **R277-202-7. Burden and Standard of Proof for UPPAC Proceedings.**

~~[A-](1)~~ In matters other than those involving applicants for licensing, and excepting the presumptions under Subsection R277-202-11(j)(10), the Board shall have the burden of proving that an action against the license is appropriate.

~~[B-](2)~~ An applicant for licensing has the burden of proving that licensing is appropriate.

~~[C-](3) [Standard of proof:—]~~ The standard of proof in all UPPAC hearings is a preponderance of the evidence.

~~[D-](4) [Evidence:—]~~ The Utah Rules of Evidence are not applicable to UPPAC proceedings.

~~[E-](5)~~ The criteria to decide an evidentiary question ~~[s shall be]~~ are:

~~(1)~~ a reasonable reliability of the offered evidence;

~~(2)~~ b fairness to both parties; and



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([3]c) usefulness to UPPAC in reaching a decision.

[F-](6) The hearing officer has the sole responsibility to determine the application of the hearing rules and the admissibility of evidence.

#### **R277-202-8. Deportment.**

[A-](1) Parties, their representatives, witnesses, and other persons present during a hearing shall conduct themselves in an appropriate manner during a hearing, giving due respect to members of the hearing panel and complying with the instructions of the hearing officer.

[B-](2) A hearing officer may exclude a person from the hearing room who fails to conduct ~~themselves~~ himself or herself in an appropriate manner and may, in response to extreme instances of noncompliance, disallow the person's testimony.

[C-](3) Parties, attorneys for parties, or other participants in the professional practices investigation and hearing process may not harass, intimidate, or pressure witnesses or other hearing participants, nor may they direct others to harass, intimidate, or pressure witnesses or participants.

#### **R277-202-9. Hearing Record.**

[A-](1) A hearing shall be recorded at UPPAC's expense, and the recording shall become part of the UPPAC case file, unless otherwise agreed upon by all parties.

[B-](2) An individual party may, at the party's own expense, make a recording or transcript of the proceedings if the party provides notice to the Executive Secretary.

[C-](3) If an exhibit is admitted as evidence, the record shall reflect the contents of the exhibit.

[D-](4) All evidence and statements presented at a hearing shall become part of the UPPAC ~~case~~ ~~file~~ and may not be removed except by direction of the hearing officer or by order of the Board.

[E-](5) A party may review a UPPAC case file upon request of the party if the review of the UPPAC case file is performed:

([1]a) under supervision of the Executive Secretary; and

([2]b) at the USOE.

#### **R277-202-10. Expert Witnesses in UPPAC Proceedings.**

[A-](1) A hearing officer may allow testimony by an expert witness~~es~~.

[B-](2) A party may call an expert witness at the party's own expense.

[C-](3) A party shall provide a hearing officer and the opposing party with the following information at least 15 days prior to the hearing date:

([1]a) notice of intent of a party to call an expert witness;

([2]b) the identity and qualifications of ~~each~~ an expert witness;

([3]c) the purpose for which the expert witness is to be called; and

([4]d) any prepared expert witness report.

[D-](4) Defects in the qualifications of an expert witness~~es~~, once a minimum threshold of expertise is established, go to the weight to be given the testimony and not to

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its admissibility.

[E-](5) An expert witness who is a member of the complainant's staff or staff of an LEA may testify and have the[ir] testimony considered as part of the record in the same manner as the testimony of any other expert.

#### **R277-202-11. Evidence and Participation in UPPAC Proceedings.**

[A-](1) A hearing officer may not exclude evidence solely because the evidence is hearsay.

[B-](2) Each party has a right to call witnesses, present evidence, argue, respond, cross-examine witnesses who testify in person at the hearing, and submit rebuttal evidence.

[C-](3) Testimony presented at the hearing shall be given under oath if the testimony is offered as evidence to be considered in reaching a decision on the merits.

[D-](4) If a case involves allegations of child abuse or of a sexual offense against a minor, either party, a member of the hearing panel, or the hearing officer, may request that a minor be allowed to testify outside of the respondent's presence.

[E-](5) If the hearing officer determines that a minor would suffer undue emotional or mental harm, or that the minor's testimony in the presence of the respondent would be unreliable, the minor's testimony may be admitted ~~[in one of the following ways:]~~as described in this section.

[F-](6) An oral statement of a victim or witness younger than 18 years of age ~~[which]that~~ is recorded prior to the filing of a complaint ~~[shall be]~~is admissible as evidence in a hearing regarding the offense if:

(1)a no attorney for either party is in the minor's presence when the statement is recorded;

(2)b the recording is visual and aural and is recorded;

(3)c the recording equipment is capable of making an accurate recording;

(4)d the operator of the equipment is competent;

(5)e the recording is accurate and has not been altered; and

(6)f each voice in the recording is identified.

[G-](7) The testimony of a witness or victim younger than 18 years of age may be taken in a room other than the hearing room, and may be transmitted by closed circuit equipment to another room where it can be viewed by the respondent if ~~[the following conditions shall be observed]~~:

(1)a only the hearing panel members, attorneys for each party, persons necessary to operate equipment, and a person approved by the hearing officer whose presence contributes to the welfare and emotional well-being of the minor may be with the minor during the testimony;

(2)b the respondent ~~[may]is not[be]~~ present during the minor's testimony;

(3)c the hearing officer~~[shall]~~ ensureses that the minor cannot hear or see the respondent;

(4)d the respondent ~~[shall be]~~is permitted to observe and hear, but~~[may]~~ not communicate with the minor; and



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([5]e) only hearing panel members, the hearing officer, and the attorneys [may] question the minor.

[H-](8) If the hearing officer determines that the testimony of a minor may be taken consistent with Subsections [R277-202-11D](4) through [G](7), the minor may not be required to testify in any proceeding where the recorded testimony is used.

[I-](9) On the hearing officer's own motion or upon objection by a party, the hearing officer:

([1]a) may exclude evidence that the hearing officer determines to be irrelevant, immaterial, or unduly repetitious;

([2]b) shall exclude evidence that is privileged under law applicable to administrative proceedings in [~~Utah~~]the state unless waived;

([3]c) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;

([4]d) may take official notice of any facts that could be judicially noticed under judicial or administrative laws of [~~Utah~~]the state, or from the record of other proceedings before the agency.

[J-](10)[~~Presumptions:~~

—(1)(a) A rebuttable evidentiary presumption exists that a person has committed a sexual offense against a minor if the person has:

([a]i) been found, pursuant to a criminal, civil, or administrative action to have committed a sexual offense against a minor;

([b]ii) failed to defend himself or herself against [~~such a~~]the charge when given a reasonable opportunity to do so; or

([c]iii) voluntarily surrendered a license or allowed a license to lapse in the face of a charge of having committed a sexual offense against a minor.

([2]b) A rebuttable evidentiary presumption exists that a person is unfit to serve as an educator if the person has been found pursuant to a criminal, civil, or administrative action to have exhibited behavior evidencing unfitness for duty, including immoral, unprofessional, or incompetent conduct, or other violation of standards of ethical conduct, performance, or professional competence.

([3]c) Evidence of behavior described in Subsection [R277-202-11J(2)](10)(b) may include:

([a]i) conviction of a felony;

([b]ii) a felony charge and subsequent conviction for a lesser related charge pursuant to a plea bargain or plea in abeyance;

([c]iii) an investigation of an educator's license, certificate, or authorization in another state; or

([d]iv) the expiration, surrender, suspension, revocation, or invalidation of an educator's license for any reason.

## **R277-202-12. Hearing Report.**

[A-](1) Within 20 days after the hearing, or within 20 days after the deadline imposed for the filing of any post-hearing materials as permitted by the hearing officer, the

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hearing officer shall sign and issue a hearing report consistent with the recommendations of the panel that includes:

(1)a) detailed findings of fact and conclusions of law based upon the evidence of record or on facts officially noted[-];

(2)b) a statement of relevant precedent, if available;

(3)c) a statement of applicable law and rule;

(4)d) a recommended disposition of UPPAC panel members ~~[which]~~that shall be one or an appropriate combination of the following:

(a)i) dismissal of the complaint;

(b)ii) letter of admonishment;

(c)iii) letter of warning;

(d)iv) letter of reprimand;

(e)v) probation, to include the following terms and conditions:

(i)A) it is the respondent's responsibility to petition UPPAC for removal of probation and letter of reprimand from the respondent's CACTUS file;

(ii)B) a probationary time period or specifically designated indefinite time period;

(iii)C) conditions that can be monitored;

(iv)D) if recommended by the panel, a person or entity to monitor a respondent's probation;

(v)E) a statement providing for costs of probation, if appropriate; and

(vi)F) whether or not the respondent may work in any capacity in public education during the probationary period;

(f)vi) disciplinary action held in abeyance;

(g)vii) suspension, to include the following terms and conditions:

(A) a recommended minimum time period after which an educator may request a reinstatement hearing under Rule R277-203; and

(B) any recommended conditions precedent to requesting a reinstatement hearing under Section R277-203-2; or

(h)viii) revocation; and

(5)e) notice that UPPAC's recommendation is subject to approval by the Board and judicial review as may be allowed by law.

[B-](2) Findings of fact may not be based solely upon hearsay, and conclusions shall be based upon competent evidence.

[C-](3) Any of the consequences described in Subsection [R277-202-12B](1)(d) may be imposed in the form of a disciplinary action held in abeyance.

[D-](4)(a) If the respondent's penalty is held in abeyance, the respondent's penalty is stayed subject to the satisfactory completion of probationary conditions.

[E-](b) The decision to impose a consequence in the form of a disciplinary action held in abeyance shall provide for appropriate or presumed discipline ~~[should]~~if the respondent does not fully satisfy the probationary conditions~~[- not be fully satisfied;-]~~.

[F-](5)~~[- Processing the hearing report:~~

——(1)(a) A hearing officer shall circulate a draft report to hearing panel members prior to the 20 day completion deadline of the hearing report.

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([2]b) Hearing panel members shall notify the hearing officer of any changes to the report:

([a]i) as soon as possible after receiving the report; and

([b]ii) prior to the 20 day completion deadline of the hearing report.

([3]c) The hearing officer shall file the completed hearing report with the Executive Secretary, who shall review the report with UPPAC.

([4]d) The Executive Secretary may participate in UPPAC's deliberation as a resource to UPPAC in explaining the hearing report and answering any procedural questions raised by UPPAC members.

([5]e) The hearing officer may confer with the Executive Secretary or the panel members or both while preparing the hearing report.

([6]f) The hearing officer may request the Executive Secretary to confer with the hearing officer and panel following the hearing.

([7]g) The Executive Secretary may return a hearing report to a hearing officer if the report is incomplete, unclear, or unreadable, or missing essential components or information.

([8]h) UPPAC shall vote to uphold the hearing officer's and panel's report if UPPAC finds that:

([a]i) there are no significant procedural errors;

([b]ii) the hearing officer's recommendations are based upon a reasonable interpretation of the evidence presented at the hearing; and

([c]iii) that all issues explained in the hearing report are adequately addressed in the conclusions of the report.

([9]i) ~~[The]~~After the UPPAC review, the Executive Secretary shall ~~[forward]~~send a copy of the hearing report to:

(i) the Board for further action;~~[- after the UPPAC review described in R277-202-42F(8)-]~~

(ii) the respondent; and

([10]iii) ~~[The Executive Secretary shall place a copy of the hearing report in]-~~the UPPAC case file.

~~[(11) If UPPAC or the Board determines that:~~

~~—— (a) the hearing process had procedural errors;~~

~~—— (b) the hearing officer's report is not based upon a reasonable interpretation of the evidence presented at the hearing;~~

~~—— (c) that the conclusions and findings of the hearing report do not provide adequate guidance to the educator; or~~

~~—— (d) that the findings or conclusions of the hearing report do not adequately address the evidence as outlined in the hearing report, the Board or UPPAC may:~~

~~—— (i) direct the Executive Secretary to schedule the matter for rehearing before a new hearing officer and a new UPPAC panel; or~~

~~—— (ii) direct the Executive Secretary to amend the hearing report to reflect the decision of UPPAC or the Board-]~~

(6)(a) If UPPAC adopts a hearing report that recommends an action, as defined in

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Subsection R277-200-2(l), either party may request review by the Superintendent within 15 days from the date the Executive Secretary sends a copy of the hearing report to the respondent.

(b) The request for review shall consist of:

(i) the name, position, and address of the appellant;

(ii) the issue being appealed; and

(iii) the signature of the appellant or the appellant's representative.

(c) An appeal to the Superintendent is limited to a question of fairness or a violation of due process.

(d) If the Superintendent finds that a procedural error has occurred that violates fairness or due process, the Superintendent shall:

(i) refer the report back to UPPAC for reconsideration as to whether the findings, conclusions, or decisions are supported by a preponderance of the evidence; or

(ii) direct the UPPAC Executive Secretary to take specific administrative action.

(e) After UPPAC completes reconsideration, the Superintendent shall:

(i) notify all parties; and

(ii) refer the report to the Board, if necessary, for final disposition consistent with this rule.

(7)(a) Prior to Board consideration of a hearing report, UPPAC shall:

(i) make the UPPAC case file available to the Board for confidential review; and

(ii) make other evidence available for review as directed by the Board.

(b) It is presumed that the Board will approve a UPPAC hearing report if:

(i) the UPPAC hearing process comports with due process and is free from a procedural error;

(ii) the hearing report is based upon a reasonable interpretation of the evidence;

(iii) the hearing report's recommendations constitute a reasonable resolution to the UPPAC investigation; and

(iv) the hearing report provides adequate guidance to the educator concerning any conditions prior to:

(A) reinstatement;

(B) termination of probation; or

(C) removal of a letter of reprimand from CACTUS.

(c) If the Board determines that any of the criteria in Subsection (1) are absent from a hearing report, or that exceptional circumstances exist, the Board shall:

(i) remand the case to UPPAC to cure any issues with due process; or

(ii)(A) issue findings specifying the defects in the hearing report and adopting the Board's agreed upon disposition of the matter; and

(B) direct the Executive Secretary to include the findings as an addendum to the hearing report, which findings constitute final Board action.

(d) Following Board adoption of a hearing report or alternative findings, the Executive Secretary shall:

(i) notify the educator;

(ii) notify the educator's employer;

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(iii) update CACTUS to reflect the Board's action; and  
(iv) report the action to the NASDTEC Educator Information Clearing house if the action results in:

(A) a revocation; or

(B) a suspension.

[G-](8) The hearing report is a public document under [GRAMA] Title 63G, Chapter 2, Government Records Access and Management Act after final action is taken in the case, but may be redacted if it is determined that the hearing report contains particular information, the dissemination of which is otherwise restricted under the law.

[H-](9) A respondent's failure to comply with the terms of a final disposition may result in additional discipline against the educator license.

[I-](10) If a hearing officer fails to satisfy the hearing officer's responsibilities under this rule, the Executive Secretary may:

([1]a) notify the Utah State Bar of the failure;

([2]b) reduce the hearing officer's compensation consistent with the failure;

([3]c) take timely action to avoid disadvantaging either party; or

([4]d) preclude the hearing officer from further employment by the Board for UPPAC purposes.

[J-](11) The Executive Secretary may waive the deadlines within this section [R277-202-12-] if the Executive Secretary finds good cause.

[K-](12) All criteria of letters of warning and reprimand, probation, suspension, and revocation [shall also] apply to the comparable sections of the final hearing report [s].

### **R277-202-13. Default.**

[A-](1)(a) The Executive Secretary may prepare an order of default if:

([a]i) the respondent fails to attend or participate in a properly scheduled hearing after receiving proper notice; or

([b]ii) the hearing officer recommends default as a sanction as a result of misconduct by the respondent or [his]the respondent's representative during the course of the hearing process.

([2]b) The hearing officer may determine that the respondent has failed to attend a properly scheduled hearing if the respondent has not appeared within 30 minutes of the appointed time for the hearing to begin, unless the respondent shows good cause for failing to appear in a timely manner.

[B-](2) The recommendation of default may be executed by the Executive Secretary following all applicable time periods, without further action by UPPAC.

[C-](3) An order of default may result in a recommendation to the Board for revocation or for a suspension of no less than five years.

[D-](4) An order of default shall result in a recommendation to the Board for a revocation if the alleged misconduct is conduct identified in Subsection 53A-6-501(5)(b).

### **R277-202-14. Rights of Victims at Hearings.**

[A-](1) If the allegations that gave rise to the underlying allegations involve abuse

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of a sexual or physical nature, UPPAC shall make reasonable efforts to:

(~~[1]~~a) advise the alleged victim that a hearing has been scheduled; and

(~~[2]~~b) notify the alleged victim of the date, time, and location of the hearing.

~~[B:]~~(2) An alleged victim entitled to notification of a hearing ~~[shall be]~~is permitted, but is not required, to attend the hearing.

**KEY: hearings, reports, educators**

**Date of Enactment or Last Substantive Amendment: ~~[July 8,]~~2015**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-6-306; 53A-1-401(3)**